

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE PROPOSED	)	
REVOCATION OF THE CERTIFICATES OF	)	
PUBLIC CONVENIENCE AND NECESSITY	)	
TO PROVIDE PUBLIC UTILITY	)	PSC DOCKET NO. 04-79
TELECOMMUNICATIONS SERVICES	)	
PREVIOUSLY ISSUED TO THIRTEEN	)	
ENTITIES (OPENED MARCH 16, 2004)	)	

**ORDER NO. 6406**

**REVOCATION OF CERTIFICATES OF PUBLIC CONVENIENCE  
AND NECESSITY FOR THE FOLLOWING UTILITIES:**

**AND NOW**, this 4th day of May, 2004, the Commission finds, determines, and Orders the following:

**I. BACKGROUND**

1. By prior Orders, this Commission granted a Certificate of Public Convenience and Necessity ("CPCN" or "Certificate") to each of the following entities authorizing that entity to provide (via resale) local or intrastate telecommunications services within the State.

<u>NAME</u>	<u>CPCN GRANTED IN PSC ORDER NO.</u>	<u>PSC DOCKET NO.</u>
Alternate Communications Technology, Inc.	3521	92-77
America's Tele-Network Corp.	4547	97-68
Comtel Network, LLC	5617	00-607
ESS.COM, LLC	5798	00-404
Key Communications Management, Inc. d/b/a Discount Plus	4112	95-189
Maxcess, Inc.	5518	00-165
Natel, LLC	5649	00-231
Norstar Communications, Inc.	5769	00-15

Ozark Telecom, Inc.	5456	99-321
Single Billing Services, Inc. d/b/a Asian American Association	5216	99-315
Stormtel, Inc.	4712	97-237
United States Telecommunications, Inc. d/b/a Telecom Plus	4905	98-324
Zenex Long Distance, Inc.	4335	96-186

2. Under the provisions of 26 Del. C. § 115, each of the above entities, as a certificated jurisdictional public utility, had an obligation to file, by March 31st of each year, a verified annual gross revenue return. Such return must contain a statement of the utility's gross intrastate revenues for the immediately preceding year, a statement of the amount of the regulatory assessment due for such year, and must be accompanied, where applicable, with the payment for such assessment. In addition, in 2003, each of the above telecommunications entities had an obligation under the then-applicable Rule 10 of the Commission's "Rules for the Provision of Competitive Telecommunications Services" (the "Competitive Intrastate Rules"),<sup>1</sup> to file with the Commission an annual report within 120 days after the end of the annual reporting period.

3. The Commission Staff had previously reported that each of the above listed entities did not file, for the year 2002,<sup>2</sup> an annual gross

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<sup>1</sup>Initially adopted in PSC Order No. 3823 (June 18, 1991). In September 2000, the Competitive Intrastate Rules were superceded by the "Rules for the Provision of Telecommunications Services," adopted by PSC Order No. 5521 (Aug. 15, 2001) (the "Telecommunications Services Rules"). Those Telecommunications Services Rules were again amended in December 2001. PSC Order No. 5833 (Dec. 10, 2001). The Telecommunications Services Rules continued, in Rule 10(a) and (d), the obligation for carriers to file an Annual Report with the Commission.

<sup>2</sup>The required annual filings reflecting revenues earned in the year 2001 would be submitted in the year 2002.

revenue report or an annual financial report, as required by 26 Del. C. § 115 and Rule 10 of the Competitive Intrastate Rules. The Staff also reported that it unsuccessfully attempted to contact each of the above entities to ensure compliance, with letters returned "undelivered" and with calls to the telephone numbers provided by several entities met with notices that the numbers had been disconnected.

4. By PSC Order No. 6377 (Mar. 16, 2004), the Commission directed the Secretary of the Commission to send a copy of that Order and the accompanying Staff memorandum to each of the above companies by certified mail, return receipt requested. By the Order, the Commission directed each carrier to show cause why its Certificate should not be revoked for its failures to comply with the above statutory and regulatory mandates.<sup>3</sup> The Secretary sent the notices to the utilities by certified mail on March 17, 2004. The Staff reports that the Secretary has now received return receipts for such mailings from the United States postal service. According to Staff, six of the receipt cards report that either the mail was "not deliverable" or "not forwardable," that the "P. O. Box was closed," that the recipient "moved and left no address," or that the recipient was "unknown." In two instances, someone did sign the return receipt card for the entity. Most importantly, none of the entities has filed any response, offering cause for its defaults, nor has any entity requested a hearing on the proposed revocation of its Certificate.

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<sup>3</sup>The Order also gave the utility the opportunity to request a hearing on whether its Certificate should be revoked. See 29 Del. C. § 10131(c).

## II. FINDINGS AND OPINION

5. This Commission has the authority to grant CPCNs to public utilities, authorizing such utilities to provide utility services in this State. 26 Del. C. § 203A(a). The corollary to the power to grant such Certificate is the Commission's power to revoke any Certificate previously granted.<sup>4</sup> Here, the Commission previously granted Certificates to the public utilities listed in Ordering paragraph one. With that, those utilities became subject to the supervisory jurisdiction of the Commission. 26 Del. C. § 201(a).

6. As a jurisdictional utility, each entity had the obligation, imposed by law, to file the verified annual gross revenue return. See 26 Del. C. § 115. In addition, in 2003, each entity, as a telecommunications carrier, also had a duty to comply with the Commission's regulatory edict that it submit an Annual Return under the then-governing Rule 10 of the Competitive Intrastate Rules.<sup>5</sup> Each entity failed to file these reports in 2003, applicable to the year 2002. Moreover, none of the entities has, over the ensuing year, sought to cure those defaults nor offer any excuse for its earlier derelictions. Indeed, one can infer from the nature of the receipts returned from the mailings made in March that, in many instances, the entity no longer exists as a viable business operation.

7. The Commission now finds that the CPCN previously granted to each of the entities listed here should be revoked due to each entity's failure, without any stated cause, to file a verified annual gross

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<sup>4</sup>See Formosa Plastics Corp. v. Wilson, Secretary, 504 A.2d 1083, 1089 (Del. 1986).

<sup>5</sup>Rule 11(b) of the Commission's present Telecommunications Services Rules allows the Commission to revoke a previously granted Certificate if the utility fails to comply with any of those Rules.

revenue return for the year 2002 as required by 26 Del. C. § 115 and to file an Annual Report in the year 2002 as required by then-applicable Rule 10 of the Competitive Intrastate Rules.

Now, therefore, **IT IS ORDERED:**

1. That, for the reasons stated in the body of this Order, the Certificate of Public Convenience and Necessity granted to each of the following entities is hereby revoked and forfeited. Such revocation shall be effective on the date of this Order. The entities are:

<u>NAME</u>	<u>CPCN GRANTED IN PSC ORDER NO.</u>	<u>PSC DOCKET NO.</u>
Alternate Communications Technology, Inc.	3521	92-77
America's Tele-Network Corp.	4547	97-68
Comtel Network, LLC	5617	00-607
ESS.COM, LLC	5798	00-404
Key Communications Management, Inc. d/b/a Discount Plus	4112	95-189
Maxcess, Inc.	5518	00-165
Natel, LLC	5649	00-231
Norstar Communications, Inc.	5769	00-15
Ozark Telecom, Inc.	5456	99-321
Single Billing Services, Inc. d/b/a Asian American Association	5216	99-315
Stormtel, Inc.	4712	97-237
United States Telecommunications, Inc. d/b/a Telecom Plus	4905	98-324
Zenex Long Distance, Inc.	4335	96-186

Such entities shall not hereafter provide public utility services within this State.

2. That the Secretary shall send, by United States mail, return receipt requested, a copy of this Order to each of the entities listed in

Ordering paragraph one. The Secretary shall also file a copy of this Order in each docket in which the Commission has granted a listed entity a Certificate of Public Convenience and Necessity.

3. That the revocations undertaken here shall not excuse any of the above-listed utilities from any liability or responsibility for any now-due regulatory assessments or charges for the years 2003 and before.

4. That the Commission reserves the right to exercise jurisdiction over any of the above entities in the event a customer of such entity may be due a refund of deposits or other monies.

5. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae  
Chair

/s/ Joshua M. Twilley  
Vice Chair

/s/ Joann T. Conaway  
Commissioner

/s/ Donald J. Puglisi  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

ATTEST:

/s/ Karen J. Nickerson  
Secretary